



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

September 27, 1993

Ms. Annette Jones  
Police Legal Advisor  
City of Waco  
Legal Services  
P.O. Box 2570  
Waco, Texas 76702-2570

OR93-587

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).<sup>1</sup> Your request was assigned ID# 22042.

The City of Waco Police Department (the "department") has received a request for information concerning complaints of sexual assault reported to the department in 1992. Specifically, the requestor seeks:

- (1) Location of the offense.
- (2) Description of person filing complaint by age and race.
- (3) Premises involved.
- (4) Time of the offense.
- (5) Description of the offense in question.
- (6) Names of the investigating officers.

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<sup>1</sup>We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

In correspondence with the requestor, you have agreed to provide certain information you think is responsive to the request. The requestor is satisfied with the information you are willing to provide in reference to active cases; however, the requestor believes that you are required to provide more information on closed cases. You contend that even in closed cases, most of the requested information is excepted from disclosure by section 552.101, 552.103 and 552.108 (formerly sections 3(a)(1), 3(a)(3) and 3(a)(8) of article 6252-17a, V.T.C.S.). We address your arguments in turn.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either Constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy if it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and there is no legitimate public interest in its disclosure. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision Nos. 579 at 2, 562 at 9, 561 at 5, 554 at 3 (1990); 438 at 6 (1986); 409 at 2 (1984); 339 at 2 (1982). Information found on the first page of a police offense report, including "identification and description of complainant," is ordinarily disclosable. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). However, the detailed description, identity, and information that tends to identify a victim of sexual assault is ordinarily protected by common-law privacy. Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (holding that the nature of the information at issue in the case, names of witnesses and detailed affidavits regarding allegations of sexual harassment, was exactly the kind specifically excluded from disclosure under the privacy exception as described in *Industrial Foundation*.) Even in closed cases, the identity of a victim of sexual assault is protected by common-law privacy. *See* Open Records Decision No. 393 (1983).

The requestor has not specifically requested the identity of any victims; however, you contend that the information requested, i.e. the age and race of the victim, the location of the offense and the premises involved would tend to identify the victim.<sup>2</sup> We cannot make such a global assumption. For example, in some cases the location of the offense, such as the victim's or the suspect's home, may tend to identify the victim. However, in other cases the offense might have occurred in a parking lot or some remote location that would not tend to identify the victim. Similarly, we do not believe that the age and race of the victim is generally the type of information that would lead to identification, especially in a city the size of Waco. We must determine on a case by case basis whether disclosure of such information would tend to identify the victim of a sexual

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<sup>2</sup>You do not argue nor is it clear from the records you have submitted for our review that release of information requested in item 5 regarding the description of the offense in question would tend to identify the victim. We assume, therefore, that you intend to release the information.

assault. Based on the information you have provided for our review, we cannot make that determination in this ruling. Therefore, common-law privacy does not prohibit the release of information regarding the age and race of the victims, the location of the offense and the premises involved unless such information tends to identify the victim.

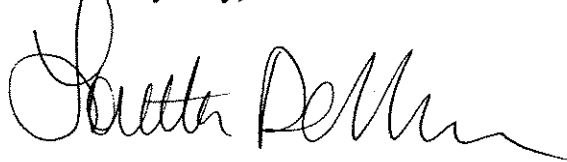
You also argue that sections 552.103 excepts the information from disclosure. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance, we understand that the records at issue are all part of closed cases. Therefore, section 552.103 is not applicable.

Finally, you contend that section 552.108 excepts the information from disclosure. Traditionally, when applying section 552.108, our office has distinguished between cases that are still under active investigation and those that are closed. Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 434, 444 (1986). Avoiding the unwarranted invasion of personal privacy is one of the law enforcement interests protected by section 552.108. Open Records Decision No. 216 (1978) at 3. Because we have already addressed the victims' personal privacy under section 552.101, we do not address it under section 552.108.

In conclusion, you must release information regarding the age and race, the location of the offense and the premises involved unless you can show us how release of the information would tend to identify a victim of sexual assault.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/rho

Ref.: ID# 22042

Enclosures: Submitted documents

cc: Ms. Bechetta Jones  
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(w/o enclosures)